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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 KATHLEEN VESTEVICH,	)	Civil No. 08-CV-27-L(JMA)
12 Plaintiff,	)	
13 v.	)	<b>ORDER GRANTING PLAINTIFF'S</b>
14 UNITED STATES OF AMERICA, <i>et al.</i> ,	)	<b>MOTION FOR LEAVE TO AMEND</b>
15 Defendants.	)	<b>COMPLAINT</b>
16 _____	)	

17 In this declaratory relief action, Plaintiff seeks to obtain a declaration that Medicare has  
18 no lien on the proceeds of a wrongful death settlement. Plaintiff settled her claims with two  
19 insurance companies following the death of her husband in a motor vehicle accident, and  
20 Medicare asserted a lien on the proceeds. Plaintiff filed a motion for leave to amend her  
21 complaint pursuant to Federal Rule of Civil Procedure 15(a) to add Michael O. Leavitt,  
22 Secretary of the United States Department of Health and Human Services ("Secretary"), as a  
23 party defendant. For the reasons which follow, Plaintiff's motion is **GRANTED**.

24 Plaintiff filed her complaint on January 4, 2008. Defendant United States answered on  
25 March 17, 2008. In its answer, the government noted that the Secretary was the real party in  
26 interest in this action. (Answer at 1.) After unsuccessfully seeking the government's agreement  
27 to stipulate to amending the complaint to add the Secretary, Plaintiff moved for leave to amend  
28 on April 14, 2008. In its opposition, the government does not dispute that the Secretary is a

proper party defendant, but instead seeks a dismissal of all the remaining defendants. The government also does not wish to waive its right to attack this court's authority to hear this case, claiming that Plaintiff failed to exhaust administrative remedies. The government does not argue that the amendment would be futile. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996).

Because leave to amend shall be freely given, *see* Fed. R. Civ. Proc. 15(a)(2), and the parties are in agreement that the Secretary is the real party in interest, Plaintiff's motion for leave to amend is **GRANTED**. To the extent the government seeks dismissal of the currently named Defendants, the relief is **DENIED** without prejudice. Any party requesting a ruling from the court must comply with Civil Local Rule 7.1, including obtaining a hearing date and filing a motion.


For the foregoing reasons **IT IS HEREBY ORDERED** as follows:

1. Plaintiff's motion for leave to amend is **GRANTED**. No later than **June 3, 2008**, Plaintiff shall file and serve the first amended complaint. Defendants shall file and serve a response within the time provided in Federal Rule of Civil Procedure 15(a)(3).

2. The government's request to dismiss the currently named Defendants is **DENIED WITHOUT PREJUDICE** to asserting it in an appropriate motion.

**IT IS SO ORDERED.**

DATED: May 27, 2008

  
M. James Lorenz  
United States District Court Judge

HON. JAN M. ADLER  
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL